HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS BILL.

Mr. Nagam Aiya.—In asking for leave to introduce the Bill of which I have given notice, I beg to make a few remarks.

For several years past, I have had it in my mind that some action should be taken by this Council for "the better protection and management of Hindu Religious and Charitable Endowments in Travancore"—such as are not already under the management of the Sircar. But the necessary information was not in the first place available, and in the second place it was a difficult task, there being no British Indian enactment as a guide to copy from, and thirdly, the needful stimulus was wanting, until our President, the Dewan, wrote to me thus more than two months ago:—
"Sometime ago, you told me that you had an intention of introducing a Bill in the Legislative Council for the better management of Hindu Pagodas and other institutions. Every day I receive complaints of mis-management of private Pagodas. Now there is no written law empowering any authority to assume management and prevent waste. Necessity for legislation on this subject is becoming very pressing."

That I have had this question in view for many years past, will be clear to the Council from the following extract of a letter, which I wrote 4 years ago, to an official member of His Excellency the Viceroy's Council. I wrote to him thus:—
"During the time you sit in the Supreme Legislative Council, I wish that something
"would be done to the Religious Endowments of British India. They represent vast
"wealth, most of which is squandered away. They should be conserved and regulated
"discharging the trust which the British Government have inherited from their pre-
"decessors faithfully to some extent, at least; like what the Native States do with
"regard to similar endowments within their territories." To which he replied on 15th January 1896, "I have little hope of being able to effect an improvement in the "administration of Religious Endowments, but it is a most important subject."

In the result, however, the condition of the Hindu Devastanoms throughout the British Indian Empire, I regret to observe, remains in the same unsatisfactory condition still, or as the Madras Government wrote in their letter to the Government of India No. 73, dated 26th May, 1894: "It is unnecessary to discuss the question
"whether the existing law embodied in India Act XX of 1063 is insufficient for the
"purposes for which it was designed; that point was settled more than 20 years ago,
"and every year merely adds to the overwhelming mass of testimony to the inadequacy
"of the law and the necessity for the speedy application of a radical remedy. Nor is
"it essential to narrate in detail the history of the efforts which this Government has
"made to meet the wishes of the Hindu community, which views with the utmost dis-
"satisfaction the well-nigh unrestricted opportunities for peculation afforded by the
"law to those who are entrusted with the administration of the great wealth belonging
"to the numerous religious institutions in the Presidency of Madras."

I will not trouble you now with the details of the Bill I propose to introduce, the object of which is only to enable Government to take power to interfere in the management of such institutions whenever in the interests of those institutions themselves such interference is called for; but on the present occasion, I will address myself to two important points in connection with the question, viz.,

I. Whether Government may interfere in matters of this kind, and

II. Whether if such interference is unobjectionable, there is any *real* need for such interference.

In reply to the first question, it will be admitted on all hands that it is the duty of Government to interfere in the case of these endowments and protect them from the wholesale misappropriation and shameful mismanagement, now going on, in direct contravention of the intentions of the original grantors of the endowments, and further, that in regard to religious trusts it is the duty of every Government to protect and safeguard them, and fully promote, as much as possible, the benevolent and charitable intentions of their donors.

For this purpose, it is not necessary to invoke the aid of ancient Hindu or Roman law-givers, as the principle itself has been again and again fully admitted and practised in more recent times. I will quote the following words of Sir. T.

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Muthuswamy Iyer's Hindu Religious Endowments' Committee of 1893–a Committee composed of the then best Native talent in the Madras Presidency, which succinctly describes the relationship that existed in India between the Rulers and these insitutions, in the Hindu, the Mahomedan and the early British periods of Indian history:— "Under Hindu rule, the Rajahs exercised through their officers real and direct "control over all religious institutions and endowments. The supervision of temple "management was and is recognised in every Native State to be one of the essential "functions of Government. As instances in point, the Native States of Mysore, Tra- "vancore and Cochin may be mentioned. The Native Rajas were deeply interested "in the well-being and advancement of Hindu Religious institutions. Many of these "institutions had been founded and endowed by their ancestors, and most, if not all, "of them continued to receive periodically pecuniary contributions from the State. "Even under Mahomedan rule, this duty of the State was not completely ignored. "Except during periods when religious intolerance was at its worst, the Mahomedan "rulers of India considered it expedient to make some provision against the de- "terioration or decay of Hindu temples by neglect or peculation, and in some "instances even added to their endowments. Under British rule, there was for many "years no enactment or regulation bearing on the management of Hindu temples. "Regulation VII of 1817 had the obvious intention and effect of continuing and main- "taining the policy that had been in vogue under Hindu and Mahomedan rulers. "Not only was there a distinct recognition of the principle that it was a duty incum- "bent on Government to keep a strict watch over religious trusts and endowments, "but practical effect was given to this principle by the exercise of efficient and "stringent control over the management of Hindu temples, through the instrumenta- "lity of the Revenue officers of the State. From 1817 to 1842, there was general "satisfaction that Hindu temples were being properly managed, and that the danger "of temple funds being misappropriated by the managers had been reduced to a "minimum. The supervision exercised by Government over the management of "Hindu temples during the period referred to was one of the many acts by which "Government endeared itself to the hearts of its native subjects."

The principle was distinctly admitted in the preamble to the Regulation VII of 1817 itself, which recited:— "Whereas considerable endowments have been "granted in money, or by assignments of land, or of the produce, or portions of the "produce of land, by former Governments of this country, as well as by the British "Government, and by individuals for the support of mosques, Hindu temples, colleges, "and choultries, and other pious and beneficial purposes: and whereas there are "grounds to believe that the produce of such endowments is, in many instances, ap- "propriated, contrary to the intentions of the donors, to the personal use of the in- "dividuals in immediate charge and possession of such endowments: and whereas it "is the duty of Government to provide that all such endowments be applied according "to the real intent and will of the grantor: and whereas it is moreover expedient to "provide for the maintenance and repair of bridges, choultries, chuthrums and other "buildings which have been erected, either at the expense of Government or indivi- "duals, for the use and convenience of the public ... ... "the following rules have been enacted."

Though the British Indian Act XX of 1863 repealed this excellent Regulation, there is a spirit of re-action again setting in now, in favor of aiding in the management of Hindu Temples and endowments in the minds of the British Government itself—as I gather from the following extract of a resolution of the Madras Board of Revenue dated 8th September, 1893, No. 524, on the Bill submitted by Sir. T. Muthuswamy Iyer's Committee:— "The real cause of the present unsatisfactory "state of things is the strict policy of non-intervention in temple management which "Government has adopted for the last half-century. But so long ago as 1876, the "Government of India receded from the position of rigid non-interference originally "taken up, and went so far as to observe, with reference to a proposed central Temple "committee at Madras, that 'it would probably be better that the members should "be appointed and removed by Government.' This observation is equally applicable "to the local Committees now proposed; and though the present Bill contains pro- "visions for nomination of members in part by Government agency, it is defective "in not providing for their removal except under section 7 or by suits instituted by

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"'persons interested.' The Board would remedy this defect by accepting and acting up-
"on the principle laid down by the Government of India, and would accordingly suggest
"(1) that the local Government should take power under the Act to remove members
"of the local committees for such mismanagement or other misconduct as, in its opinion,
"shows them to be unfit to administer the endowments; and (2) that the Collector
"should also be empowered, on complaint made by (say) six or more persons qualified
"to be elected members of committees, to enquire into the working of any committee,
"and, if necessary, to recommend to Government the removal of any member or mem-
"bers for notorious wrong-doing or for neglect of duty." "The Board is, however,
"fully convinced that the control of 'local officials holding influential and responsible
"positions' is absolutely necessary and that it is inevitable that Government, through
"one of its Departments, should interfere in the matters above referred to. The Board
"would, however, leave the Bench undisturbed and exercise the necessary control
"through the ordinary administrative machinery of the Revenue Department."

Sir George Campbell, a former Lieut. Governor of Bengal, writes in his 'India as it may be':—"I think that all such endowments should be supervised by "Government, that the conditions of tenure should be distinctly registered, that their "fulfilment should be annually ascertained, and that Government should retain a "power of putting them from time to time into proper hands, and when necessary, re-"distributing the funds."

The Ceylon Government has a very complete ordinance, providing "for the "better regulation and management of the Budhist Temporalities in the Island", according to which, clear and detailed rules are laid down for the conduct of Trustees, the checks upon them by District and Provincial Committees, powers to suspend and dismiss Trustees, and in some cases for subjecting them to criminal prosecution, thus showing a very considerable difference in the treatment of temples and their funds from what the British Indian Government has recently adopted in the Indian Empire. This ordinance is No. 3 of 1889.

In our own country, the principle has been again affirmed in the Royal Court of Final Appeal, case No. I of 1062, M. E., in which our learned President sat as Chief Justice. It was held in that case, that the Sircar has the power of interfering in the affairs of public institutions, under the control of hereditary trustees, in cases of gross neglect of duty or misconduct and of assuming the management of such institutions, without recourse to law, if that course is necessary in the interests of such institutions. In the course of the decision the Judges observed:—"We are not "prepared to hold with the learned Judges of the High Court that the Government, in "the first instance, are bound to seek the aid of the Civil Courts, to exercise this "power. Any member of a community to which a religious institution belongs, has "the power to remove even an independent *hereditary trustee with the aid of the Civil "Courts*. (I. L. R. III Bom. page 27, III All. page 636 and T. L. R vol. VIII, page 63). "Reason points to the conclusion that the Government, which is *parens patriae*, "must possess higher powers than those of its subjects. We think that the executive "on being satisfied of the existence of strong grounds for its interference, may assume "the management of public trusts, without prejudice to the rights of the aggrieved "parties to obtain redress for wrongs committed upon them, by an appeal to the judi-"cial tribunals in due course of law. The best interests of public trusts require that "the Government should possess this summary power. If it is obliged to remove by "suit every defaulting trustee, the consequence would be very serious to the interests of "religious institutions. For instance, if divine service is discontinued in a Hindu "shrine held in great veneration, the serious consequences that result therefrom, can-"not, from a religious point of view, be remedied by any relief granted by Courts; and "prompt action would be necessary to secure the continuous performance of service. "Who should take such action? None but the Government can be safely entrusted "with the power of interference on emergent occasions. The position of the Govern-"ment demands that every presumption should be made in favour of the fairness and "justice of its proceedings. The parties aggrieved by any unwarranted or injust "action of the executive can obtain redress by civil action."

It is thus clear that it is the duty of the State to look after these endowments and regulate and control them from time to time, their welfare being thus made an

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object of its constant care and solicitude. I will go further, and say that it is not only the duty of Government but their interest as well to regulate them, for in times of famine or general distress, these endowments, if well managed, will become sources of enormous help and might enable Government to tide over difficulties otherwise insurmountable.

The next point for consideration is whether there is in the present condition of the private Hindu temples and charities of Travancore, any real need for such Government interference, as is contemplated—whether the present trustees and managers of those institutions are not themselves alive to a sense of duty and responsibility, so as to make enquiry into their condition by Government an unwelcome interference, and a wholly superfluous and gratuitous task from their point of view? In answer to this question, I can boldly say that Government interference is *absolutely essential*. One of my valued correspondents, in suggesting a full enquiry, writes, "there is no doubt a prevailing notion that religious and charity endowments have been mismanaged by private agencies." The result of my best enquiries goes to show that the prevailing notion is well-founded in the opinion of private gentlemen, as well as of some of our best men who have seen different branches of the public service, and who have moved closely with the people, living in their midst, and concerning themselves in their affairs, their interests and their aims, and knowing from very considerable local knowledge their wishes, their difficulties and their short-comings. These gentlemen who have favored me with replies to my queries on the subject, are unanimous in declaring that mismanagement and malversation of temple and charitable funds are the rule, while the faithful and honest fulfilment of the benevolent intentions of original donors as a sacred duty, is the exception. Permit me, therefore, to quote from some of their letters which will satisfy the Council how *real* the evil is and what *baneful* effects it has produced and will produce on the population, if unchecked—not to speak of the blight which it will lead to and chill of all light and warmth from the hearts of future donors of pious and beneficial endowments, if any, in this age. I have no doubt that you will come to the conclusion that legislation is necessary.

One of our most experienced officers,—a gentleman who has served in the Revenue, Police and Judicial Departments of the Public service writes:—"I beg to "inform you that legislation is necessary to protect private Hindu temples and other "charities."....."By an Act like the one you propose, you would be doing a "service to the country and to the cause of charity by putting down endless malver- "sation of useful and valuable funds and the litigation consequent upon it."

Another of our high officers writes:—"Such being the case, it becomes very "necessary that such charitable funds and institutions have to be placed on a satis- "factory footing by introducing proper management, guaranteeing to carry out the "object of the charity"....."Hence arises the obligation on the part of the "Government to frame such laws and regulations for the proper management of the "institutions throughout the State, and to carry out as much as possible the inten- "tionsof the donors."

One of our most experienced Tasildars, now a First class Magistrate, writes:— "The Government not having a direct interest in the matter and the existing law "being defective, there seems to be no check against the malpractices in respect of the "trust property and consequently the evil is growing day by day. The nominal in- "terference of the State under the principle that the Sovereign is the protector of all "charities does not carry the desired effect. Measures for the proper conduct of the "charities, as intended by the donors, with the result of a wholesome check against "misappropriation, should be adopted. I, therefore, think that legislation on the "subject is highly necessary."

A retired educational officer of ripe experience and great knowledge writes:— "Unless Government interfere in these temples and regulate their affairs, the arrange- "ments made by the people themselves from time to time will never be satisfactory, "as can well be seen from the present condition of these temples."

Another of our retired officers, but young and highly educated and a former member of this Council writes:—"Considering this fact as well as the extent of the properties concerned and of the proportion of the general population whose pros-

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perity is closely connected with these properties, I have no hesitation in urging that the legislature should lose no time in providing an instalment of its help for the protection of these Devaswams."

One of our judges writes :—" I may assure you I am satisfied that legislative " interference is imperatively called for, for regulating the administration of these " endowments."

Another experienced Judge writes :—" To be brief, the evidence adduced " in several cases that came before me relating to the Devasvoms and their endow- " ments for the last 24 years, has convinced me that most of the Ooralens and the " Samudayams have rendered themselves quite unfit to be the trustees and managers " of the Devasvoms, and that it is hopless to expect that the interests of the several " sacred temples can be properly safe-guarded by them who allege freedom from " responsibility to any one but themselves.

" It is very seldom that the devotees and worshippers of the religious and " charitable institutions avail themselves of the wholesome provision contained in " section 511 of the Civil Procedure Code. "

One of our noblemen in North Travancore writes :—" I think it highly desirable " that we should, by legislative interference, put a stop to the misappropriation of the " temple funds."

One of our best Munsiffs writes :—" In my opinion, legislation on the subject is " necessary, and I have on several occasions mentioned the desirability of the Govern- " ment making at least some provision for the better management of private charities, " to some of my friends and even to the late Dewan."

Another experienced Munsiff writes :—" I am, therefore, in favor of a Bill " being introduced in our Legislative Council for affording proper protection and " management of the affairs and the funds, particularly of the private Hindu religious " and charitable institutions."

A third Munsiff writes :—" I think with others, whose opinion I have ascer- " tained, that Government should extend its protecting arm to remedy such state of " things. It recognised the principle in Colonel Munro's time, but in giving effect to " it, it selected those temples which, while their support would not entail any cost on it, " would be a source of public revenue."

A young and energetic Tasildar writes :—" I think a Regulation for the pro- " tection and better management of all religious and charitable institutions both public " as well as private is necessary."

An experienced Vakil of South Travancore writes :—" On the other hand, it " must be admitted that nothing will go straight, if there is not some sort of Govern- " ment interference. Our people are not sufficiently educated to regulate the autonomy " of their institutions, and if anything is rotten, those interested have neither the will " nor the inclination to set matters right" ... ... " I, therefore, submit that " Government interference is necessary and legislation must be resorted to."

A Manager of one of our Brahmin Jemmis near Trivandrum writes :—" If " Government were pleased to undertake the supervision of these temples, not only " will the anarchy at present prevailing in them disappear, but the original intention " of the donors will be properly fulfilled, malversation of funds be removed and their " properties will increase, the temples themselves repaired, thus resulting in prosperity " and reputation to the people, the donors and Government."

One of my Assistants writes thus :— "As regards question No. 1, viz., whether " there is any considerable misappropriation of private temple funds or mismanage- " ment of private charitable endowments, I feel no doubt that Pagodas which are " exclusively managed by private individuals are not the models of what they ought to be in the view of their original founders." ... ...
" Abuses in these endowments often arise from a few causes. The most promi- " nent of these are mismanagement by incapacity, fraud and lack of interest in the " temple affairs" ... ... " I, therefore, sum up that a reform is urgently called

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"for, to place them on a satisfactory footing and that the formation of local Boards "with ample executive powers and subject to the orders of the State would be a "means to obviate existing evils."

A very intelligent Supervisor in the Settlement Department writes:—"As "the present condition of these temples and charities is unsatisfactory and matter "of general complaint as shown above, an enactment for their preservation and im- "provement is absolutely necessary and will give to the people at large greater satis- "faction than all other regulations conserving public interests."

Another intelligent Supervisor also writes:—"The management of all public "charities should at once be assumed by Government. Regarding private charities, "if the donors so desire in writing, Government may take them; or, if the family of "the donor be large and if its members quarrel among themselves and consequently "mismanage the charity, Government can, after enquiry and proof, interfere."

A retired Tahsildar of ability and experience writes:—"I have mentioned "here only the names of a few temples and *Samuhathumadoms* which are on the high "road to ruin. I believe that a close examination will show more than a thousand "private temples and charitable institutions in this miserable condition. There is "sufficient reason to infer that the present condition of the management and conduct "of such institutions is rotten and unsatisfactory and that such a state of affairs "greatly affects the public well-being and advancement of the Hindus. The people "are gradually growing more selfish; so, no one troubles himself about the common "weal. If Government also remain silent, the interests of the public at large will be "wholly unprotected. Hence the time is come for a complete and definite legislative "enactment being introduced."

Two respectable ryots south of Trivandrum write:— "Thus the charities "are not only not properly managed, but they do not remain even in name; and in "these days, most of the people are indifferent and devoid of all love of charity. "Hence if a regulation be passed enabling Government to assume *melkoinma* over, "and to regulate the conduct of, these charities, the private charities above "mentioned as well as those incorporated with the temples having എഴുതി തീരുവ such "as Namaskarams (കാൽ കഴികിച്ചുട്ടു) will thrive well: if not, there is no likelihood "of their proper conduct and better preservation. We say all this from our own "personal experience."

It is not necessary to trouble the Council with the names of the temples or charities where, at present, management is declared to be very unsatisfactory in the opinion of my correspondents, who have personal experience of them. It is enough to state that every important endowment whether of temple or charity is torn by dissensions amongst the managers, or disfigured by litigation in the civil courts.

Before concluding, I will say one or two words on the magnitude and import- ance of the interests at stake. The State had no concern with the management of any temples before the year 987 M. E. when the landed properties of 378 temples were assumed by the State and the management taken over. 1,171 minor temples which had no property were also assumed either before or at that date. The expenditure, establishment and the routine of ceremonies, rules for management, all were settled for these 1,549 temples on this occasion by Col. Munro—the Dewan Resident, on a permanent basis. But this number, 1,549, represents only a fraction of the temples of the State. According to the Census of 1875, there were returned 9,307 temples throughout the State. Deducting the number under Sirkar manage- ment (*viz.*, 1,549), we get 7,758 temples beyond the pale of Government management. That is, 17 per cent of the total temples of the State are under Government manage- ment, while 83 per cent are outside it. This number is exclusive of 'Kavoos' and 'Thekkathoos' of Malayali houses, whose number is legion. Lieutenants Ward and Connor give 22,900 'religious temples and places of worship' independent of churches, musjeeds and synagogues. But in the statistical table appended to their Report, one of the columns under which alone, 15,000 are returned, is 'temples and groves dedicated to minor divinities.' The groves and thekkathoos have been excluded in the Census, and hence the difference between the two results.

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The property owned by these 7,758 temples is also vast. According to the settlement of 1012, which comprised only a settlement of garden lands, these private Devasvoms owned 54,155 gardens, tax—free. The temples within the boundaries of Adhigara Olivu and Desa Olivu tracts are excluded from this calculation. The assessed rental of these 54,155 gardens came to 79,496 Rs. It can be safely estimated that the present assessment on them will come to 1½ lacs of Rupees. Multiplying this sum by 25, we get the figure 37½ lacs of Rupees—the capitalized value of those gardens. The paddy lands of the same may be estimated to be worth about 60 lacs of Rupees,—in all, the landed property of the Devaswoms whose welfare it will be the object of this Bill to promote, may be put down as worth 1 crore of Rupees. The movables of these temples may be valued at ⅓of a crore, excluding the buildings, almost all of which are in different stages of decay throughout the country. These are the properties known to the public accounts before 1012. Properties purchased since then in the name of those temples, or properties dedicated to them, or to other charities before that date if paying Sircar tax, cannot be discovered from the Sircar accounts. These also will swell the property of these institutions. It may not be far wrong if I estimate that the total value of the endowments meant to be dealt with is about 2 crores of Rupees. I trust this will give the Council an idea of the magnitude and importance of the question we are dealing with.

If you permit, I shall introduce a Bill at an early date. With regard to its scope, I will only state that it is intended to be very limited, that Government seeks no profit by the proposed legislation, that the well-being and prosperity of the institutions are our only aim, and the satisfaction of the public our best reward. No radical changes are contemplated, no vested interests will be rudely disturbed. Dishonest managers will be watched and corrected. Honest trustees will be helped and encouraged. In every way, the intentions of the original donors will be followed and fulfilled.

Permission was granted accordingly.

NEGOTIABLE INSTRUMENTS BILL.

Mr. Prince.—The next business on the agenda paper is the Negotiable Instruments Bill, which was introduced into this Council by another member and entrusted to me after his term of office expired. I have cordially supported the Bill throughout, and was a member of the Select Committee to which it was referred. Our views have been fully explained in the Select Committee's Report which has been published in the Gazette, and has been sufficiently long before the public. At the last meeting of the Council, I, proposed that the consideration of the Bill be deferred, as I understood that the High Court, in reference to a case recently decided by them, were going to make some suggestions in regard to this Bill. These suggestions are now before the Council, in a letter addressed by the High Court to the Dewan, which has been circulated among the members. I have given my best consideration to these suggestions; and with all deference to the High Court, I can see my way clear to adopting only one of those suggestions. I beg to propose, that in para 2 of section 1, the words, "in an *Asiatic* language" be omitted, and the words "other than those executed by, or to, Europeans or Americans", be substituted instead. My reason for the amendment is that as the section now stands, we give the public the benefit of local usage, when the instrument is drawn in their own language which they perfectly understand, but do not give it to them when the instrument is in English, with which they are persumably less familiar. The privilege is not necessary in the case of Europeans and Americans, who draw up their bills in English, according to mercantile usage to which they are well accustomed.

Seconded by Mr. Maltby.

Mr. Ramier.—It seems to me that the amendment proposed has two important defects in it. The first is, that the operation of the saving clause proposed in the amendment would affect not instruments drawn in a particular language as contemplated in the Bill and in the British Act, but instruments between particular persons. If a Bill is drawn up in an Asiatic language—Malayalam or Tamil,—though the party connected therewith may be a European, he cannot bring in local usage to bear upon it. I do not see why, if a European chooses to take a Bill of Exchange from a native,

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